IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 793 of 2000
IN
SPECIAL CIVIL APPLICATIONNo 1078 of 1986

WITH

CIVIL APPLICATION No 10545 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESH C SHAH

Versus

FOOD CORPORATION OF INDIA

Appearance:

1. LETTERS PATENT APPEAL No. 793 of 2000
MR CL SONI for Appellant No.
RULE SERVED for Respondent No. 1
SERVED BY RPAD - (R) for Respondent No. 1
M/S THAKKAR ASSOC. for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Heard the learned counsel for the parties. Special Civil Application No. 1078 of 1986 filed by the appellant - petitioner was initially dismissed in absence of the learned counsel for the petitioner by the learned Single Judge. Therefore, Civil Application No. 14136 of 1999 was filed in that Special Civil Application No. 1078 of 1986 for restoring the same at its original number and deciding the same on merits. That Civil Application was dismissed by the learned Single Judge by judgment and order dated 13/3/2000 by a detailed order running into five typed pages. While deciding the said Civil Application the learned Single Judge proceeded to hear the main petition on merits, still he has not thought it fit to grant the Civil Application and restore the main petition. Main petition can only be decided on merits only after it is restored to the file. Civil Application for restoration has to be decided on its own merits. If the sufficient cause is made out, then the main petition has to be restored. Without restoring the same it cannot be decided on merits.

2. In view of the above, without expressing any opinion about the legality and validity of the order passed by the learned Single Judge dismissing Civil Application No. 14136 of 1999, this appeal is allowed and the order dated 13/3/2000 passed by the learned Single Judge dismissing the Civil Application No. 14136 of 1999 is hereby quashed and set aside. Accordingly, Civil Application No. 14136 of 1999 is allowed. The net result is that main Special Civil Application No. 1078 of 1986 is restored to the file at its original no. Once it is restored to the file, then the said Special Civil Application No. 1078 of 1986 is required to be decided on merits by the learned Single Judge. We are sure that the learned Single Judge will decide the same without being influenced by the order passed by the learned Single Judge on 13/3/2000 in Civil Application No. 14136 of 1999. With this observation, this appeal is allowed. The main Special Civil Application No. 1078 of 1986 is an old matter, therefore, we request the learned Single Judge taking up such matters to hear and decide the same

as early as possible.

Civil Application No. 10545 of 2000 does not survive as the main appeal itself is allowed.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.